

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

*Casper
PC-IV*

FILE:

B-220671

DATE: February 4, 1986**MATTER OF:**

Eastern Maintenance and Services, Inc.

DIGEST:

1. Net worth of individual sureties on a bid bond need only be equal to the difference between the price stated in the bid and the price stated in the next low acceptable bid.
2. An agency may properly find a bid bond deficient when one of the bidder's individual sureties fails to disclose other outstanding bond obligations and the total amount of those obligations exceeds the surety's net worth.
3. A continuing pattern of nondisclosure of outstanding bond obligations by an individual surety provides a reasonable basis for finding a bidder nonresponsible.

Eastern Maintenance and Services, Inc. protests the rejection of its bid under invitation for bids (IFB) No. F05604-85-B-0062, issued July 18, 1985 for shelf stocking and custodial services at the commissary at Peterson Air Force Base, Colorado. The Air Force rejected Eastern Maintenance's bid on grounds that the bid bond submitted with it was deficient.

We deny the protest.

The IFB required a bid bond equal to 20 percent of the base bid price. Eastern Maintenance submitted a bid in the total amount of \$612,720, covering a base year (\$210,240) and 2 option years (\$201,240 each); its bid bond was \$42,048. Because Eastern Maintenance was bonded by two individuals, rather than a corporate surety, in accord with the Federal Acquisition Regulation (FAR), 48 C.F.R. § 28.202-2 (1984), each completed an Affidavit of Individual Surety (Standard Form (SF) 28). This form specifically required disclosure of all other bonds on which these individuals were listed as sureties at the time they executed the bid bond for Eastern Maintenance.

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When the low bidder under the solicitation failed a preaward survey and applied to the Small Business Administration (SBA) for a Certificate of Competency, Eastern Maintenance, as second-low, appeared to be next in line for award (assuming a negative decision from the SBA). In a letter dated October 7, 1985, however, the contracting officer rejected Eastern Maintenance's bid, stating that the firm's individual sureties had failed to complete Item 10 of SF 28, disclosing outstanding obligations on this and other bonds; that one of the sureties had failed to provide locations of real properties listed as assets; and that the same surety had provided insufficient information as to his other business dealings. It now appears, however, that the primary reason the Air Force rejected the bid was because one surety's obligations on other bonds that the Air Force was aware of exceeded his net worth.

The protester maintains that failure of the sureties to disclose other outstanding bond obligations is a minor error that may be waived; that the contracting officer had a duty to request the locations of the real properties and to use their fair market value, rather than assessed value, in calculating the surety's net worth; and that the contracting officer was required to seek any additional information necessary to determine the surety's net worth. In addition, the protester contends that its surety has a net worth that exceeds the difference between its bid and the next-low bid, and that this is all that is required.

Initially, we note that a surety is required to disclose all bond obligations under Item 10 of SF 28, regardless of the actual risk of liability on those obligations, to enable the contracting officer to make an informed judgment concerning the surety's financial soundness. Since Item 10 provides a particular space for the surety to do so, we believe that the duty of the individual surety to disclose, without exception, is clear. Singleton Contracting Corp., B-216536, Mar. 27, 1985, 85-1 CPD ¶ 355. A surety's failure to comply with the requirement for disclosure is an appropriate factor for a contracting officer to consider when determining the acceptability of the bidder. Dan's Janitorial Service, Inc., 61 Comp. Gen. 592 (1982), 82-2 CPD ¶ 217.

The protester here correctly states that the net worth of a surety on a bid bond need only be equal to the difference between the price stated in the bid and the amount of the next-low bid. American Construction, B-213199, July 24, 1984, 84-2 CPD ¶ 95; FAR, 48 C.F.R. § 28.101-4(b). In this case, however, it is immaterial whether the amount used is

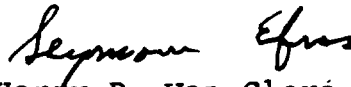
\$42,048 (20 percent of the protester's base year bid) or \$10,124 (the difference between the protester's 3-year evaluated price of \$612,720 and the next-low bidder's, \$622,844.20). This is because, as explained below, the obligations of the individual surety clearly exceed his net worth, and he therefore is unable to guarantee either amount.

The record reveals that, contrary to the protester's allegations, the contracting officer made extensive inquiries as to the outstanding obligations of the individual surety in order to determine his net worth, contacting 10 other Air Force installations. The contracting officer found that the surety was also acting as an individual surety on performance and payment bonds on four active Air Force contracts, as well as on four bid bonds, and that his total bond obligations on other Air Force contracts amounted to \$2,284,290. The protester argues that at least some of the bid bond obligations should not have been considered, since contracts associated with them already had been awarded. This also is immaterial because the surety's obligations on payment and performance bonds for the four active Air Force contracts alone amounted to \$1,601,860.65. The SF 28 submitted by the surety showed that his net worth including his own valuation of real properties, was \$1,553,800. The surety's obligations, excluding bid bonds, thus exceeded his net worth.

The protester further argues that the contracting officer should have decreased the surety's liability on the outstanding payment and performance bonds as performance proceeded on the contracts that they covered. However, as indicated on the Performance Bond (SF 25), a surety remains obligated until expiration of the mandatory guarantee period under a contract, so that the full amount of a performance bond is an outstanding obligation until that time. Similarly, the Payment Bond (SF 25-A) states that the surety remains obligated until the contractor has paid all persons furnishing labor and/or materials under the contract. Since at least four Air Force contracts were active at the time Eastern Maintenance submitted the bid bond in question, we believe it was reasonable for the agency to assume that the payment and performance bonds associated with them were outstanding obligations of the individual surety. See FAR, 48 C.F.R. §§ 53.301-25, 53.301-25A; Satellite Services, Inc., B-220071, Nov. 8, 1985, 85-2 CPD ¶ 532; Singleton Contracting Corp., B-216536, supra.

Finally, the agency reports that there has been a continuing pattern of nondisclosure of information as to the individual surety's outstanding bond obligations on other Air Force contracts. This also would have provided the contracting officer with a reasonable basis upon which to find the protester nonresponsible. Consolidated Marketing Network, Inc.--Request for Reconsideration, B-218104.2, June 12, 1985, 85-1 CPD ¶ 675. In view of the contracting officer's other findings, however, there is no legal basis for us to object to the agency's determination that Eastern Maintenance's bid bond was deficient. See Clear Thru Maintenance, Inc., 61 Comp. Gen. 456 (1982), 82-1 CPD ¶ 581; Ken Baughman, B-215187, Dec. 26, 1984, 84-2 CPD ¶ 699; 48 C.F.R. § 14.404-2(i).

The protest is denied.


for Harry R. Van Cleve
General Counsel